

~~TOP SECRET//COMINT//NOFORN~~

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.



IN RE APPLICATION OF THE FEDERAL
BUREAU OF INVESTIGATION FOR AN ORDER
REQUIRING THE PRODUCTION OF TANGIBLE
THINGS FROM




DOCKET NO. BR 09-06

ORDER

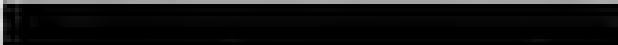
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On May 29, 2009, this Court issued a Supplemental Order [REDACTED] that addressed several issues. Among other things, the May 29 Supplemental Order noted the government's recent disclosure that the unminimized results of authorized queries of [REDACTED] metadata collected by the National Security Agency (NSA) pursuant to the Court's order in [REDACTED] and prior FISC orders [REDACTED] had been shared with NSA analysts other than the limited number of analysts authorized to access such metadata. May 29 Supplemental Order at 1-2. Such sharing had not previously been disclosed to the Court. *Id.* at 2. The May 29 Supplemental Order also noted the government's disclosure of an inaccuracy regarding the number of [REDACTED] reports described in paragraph 14 of the declaration attached as Exhibit A to the application in [REDACTED]

The Court directed the government to submit, within 20 days, a declaration correcting the inaccuracy regarding the number of reports and to provide a complete and "updated description of NSA's dissemination practices." May 29 Supplemental Order at 3-4. [REDACTED]



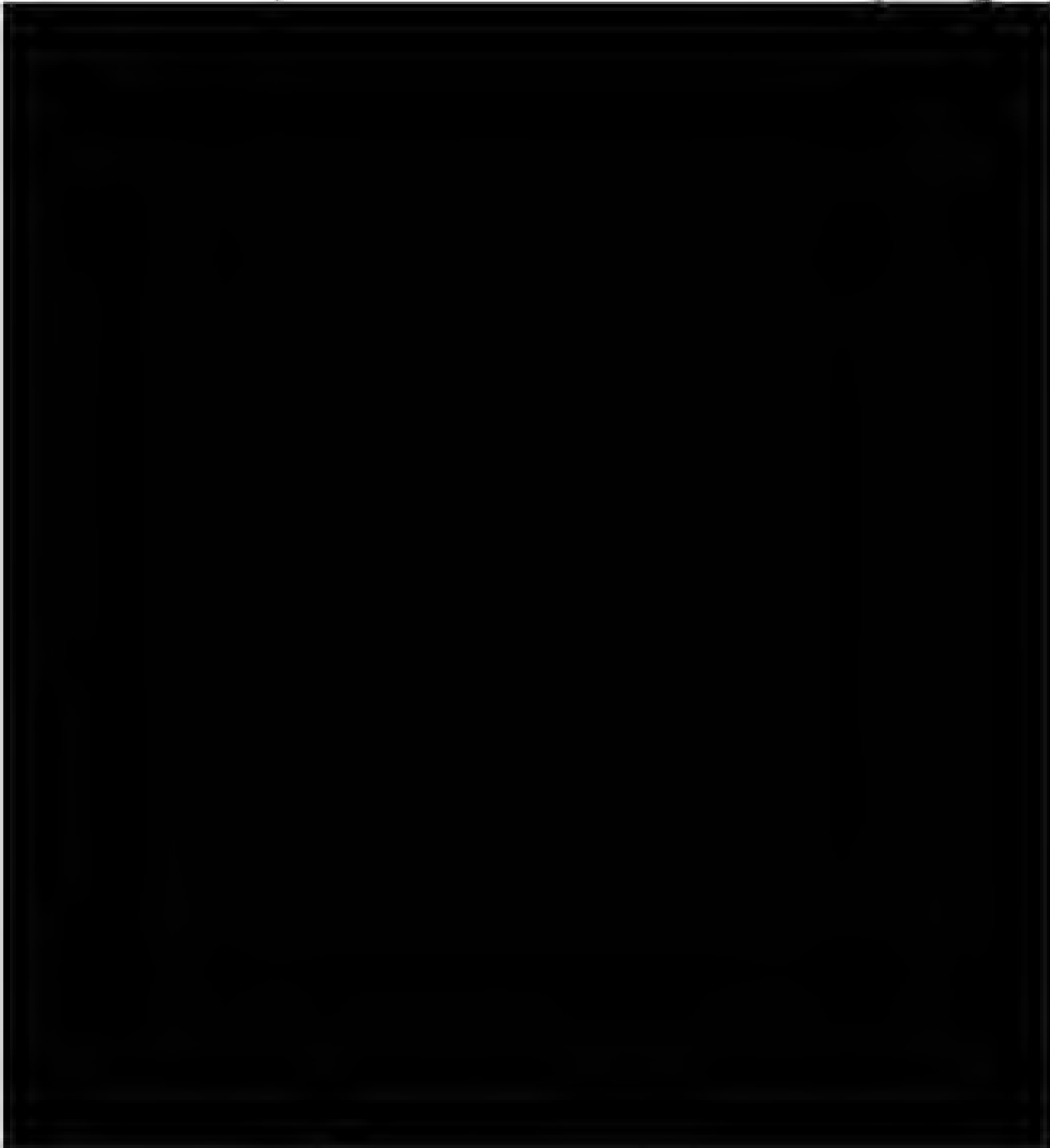


On June 18, 2009, the United States submitted the Government's Response to the Court's Supplemental Order Entered on May 29, 2009, 



Unfortunately, the government's responses to the Court's May 29 Supplemental Order also raise two additional compliance issues, _____

_____ but also its orders in the _____ bulk business records collection, which was last renewed by the Court in Docket No. BR 09-06.





Second, the government referred in its June 18 submissions to a dissemination-related problem that was first brought to the Court's attention in a "preliminary notice of compliance incident filed with the Court on June 16, 2009." June 18 Declaration at 3 n.1. In the June 16 notice – and in a separate notice filed contemporaneously in Docket No. BR 09-06 – the government informed the Court that the unminimized results of some queries of metadata

██████████ had been "uploaded [by NSA] into a database to which other intelligence agencies . . . had access." ██████████

██████████ Preliminary Notice of Compliance Incident filed June 16, 2009, in Docket No. BR 09-06 at 2. Providing such access, the government explained, may have resulted in the dissemination of U.S. person information in violation of USSID 18 and the more restrictive restrictions on dissemination proposed by the government and adopted by the Court in its current and prior orders in both of the above-captioned matters. ██████████

[REDACTED] Preliminary Notice of
Compliance Incident filed June 16, 2009, in Docket No. BR 09-06 at 2 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] The government asserts that NSA terminated access by outside agencies to
the database at issue on June 12, 2009, and that it is still investigating the matter. Preliminary
Notice of Compliance Incident filed June 16, 2009, in Docket No. BR 09-06 at 2; [REDACTED]

[REDACTED]



[REDACTED] The Court is also seriously concerned regarding NSA's placement of

unminimized metadata [REDACTED] into databases accessible by outside agencies, which, as the government has acknowledged, violates not only the Court's orders, but also NSA's minimization and dissemination procedures set forth in USSID 18.

Accordingly, it is hereby ORDERED that:

1. [REDACTED]

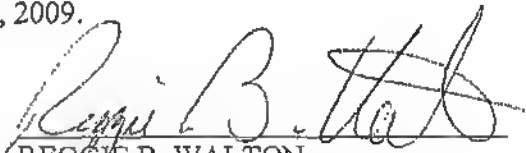
2. With regard to [REDACTED] BR 09-06, the government shall, by 5:00 p.m. each Friday, commencing on July 3, 2009,² file with the Court a report listing each instance during the seven-day period ending the previous Friday in which NSA has shared, in any form, information obtained or derived from the [REDACTED] BR metadata collections with anyone outside NSA. For each such instance, the government shall specify the date on which the information was shared, the recipient of the information, and the form in which the information was communicated (e.g., written report, email, oral communication, etc.). For each such instance in which U.S. person information has been shared, the Chief of Information Sharing of NSA's Signals Intelligence Directorate shall certify that such official determined, prior to dissemination, the information to be related to counterterrorism information and necessary to understand the counterterrorism information or to assess its importance;

3. With regard to [REDACTED] BR 09-06, the government shall

² If Friday is a holiday, the report shall be submitted on the next business day.

include, in its submissions regarding the results of the end-to-end reviews, a full explanation of why the government has permitted the dissemination outside NSA of U.S. person information without regard to whether such dissemination complied with the clear and acknowledged requirements for sharing U.S. person information derived from the metadata collected pursuant to the Court's orders.

IT IS SO ORDERED this 22nd day of June, 2009.



REGGIE B. WALTON

Judge, United States Foreign
Intelligence Surveillance Court